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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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Amendment to the Commission's Rules)
To Permit Flexible Service Offerings)
in the Commercial Mobile Radio Services)

WT Docket No. 96-6
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

To: The Commission

COMMENTS

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BellSouth Corporation ("BellSouth") hereby comments on the Commission's *Notice of Proposed Rule Making*, WT Docket No. 96-6, FCC 96-17, released January 25, 1996. BellSouth supports allowing all CMRS providers to use their spectrum for both mobile and fixed wireless applications, without restriction. This flexibility will allow spectrum to be fully utilized in the most efficient manner possible. At the same time, the Commission should ensure regulatory parity for services which compete against one another

I. CMRS Licensees Should Be Permitted to Use Their Assigned Spectrum to Provide Fixed Wireless and Mobile Wireless Services

In the *NPRM*, the Commission proposes to allow broadband CMRS providers to offer fixed wireless local loop service and requests comment on whether all fixed services should be permitted over broadband CMRS frequencies.¹ BellSouth agrees that CMRS licensees should have maximum flexibility with regard to spectrum usage. Licensees should be allowed to use their spectrum to provide any service that responds to the needs of the public. Accordingly, the Commission should permit all CMRS providers to use their spectrum to satisfy demands for fixed, as well as mobile, services.

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When cellular spectrum was originally licensed, it was the only effective means for providing two-way wireless mobile communications. There were only two service providers per market and only 40 MHz of spectrum available to satisfy the public demand for wireless two-way mobile communications.² Under these circumstances, it was necessary to place limitations on fixed service applications, in order to ensure the availability of sufficient spectrum to satisfy demand for mobile services. With the licensing of PCS, however, there will be five or more providers of broadband CMRS service³ over an additional 153 MHz of spectrum.⁴ These competing licensees will have both the capacity and the incentive to provide a range of services responding to public demands. The offering of fixed services clearly will not diminish the availability of higher quality, high-capacity mobile service. Accordingly, there is no longer a need to limit the provision of fixed services over these frequencies.

² See *Inquiry Relative to the Future Use of the Frequency Band 806-960 MHz*, Docket No. 18262, *Memorandum Opinion and Order*, 51 FCC 2d 945 (1975). An additional 10 MHz was allocated to cellular in 1986. While there have been non-cellular two-way mobile services available for many years, such services typically utilized only limited numbers of channels and had insufficient capacity to provide broad-based service. Similarly, the two-way wireless spectrum allocated to the private radio services was not available for the provision of a broad range of services to the general public, due to eligibility and usage restrictions.

³ Assuming maximum spectrum aggregation, there would be three PCS providers and two cellular providers. Enhanced SMRS provide an additional source of broadband CMRS.

⁴ See *Amendment of the Commission's Rules to Establish New Personal Communications Services*, GEN Docket No. 90-314, *Memorandum Opinion and Order*, 9 F.C.C.R. 4957, 4963, 4970-71 (1994) (allocating 120 MHz for broadband PCS); *First Report and Order*, 8 F.C.C.R. 7162, 7164-66 (1993) (allocating 3 MHz for narrowband PCS); *Memorandum Opinion and Order*, 9 F.C.C.R. at 4990 (allocating 30 MHz for unlicensed PCS); see also *Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, FCC 95-317, *First Report*, ¶ 45 (August 18, 1995) ("*First Annual Report*").

The public interest would be disserved by requiring CMRS licensees to use their spectrum principally or exclusively for the provision of mobile services. As the Commission has previously recognized, the agency's proper role is to ensure "a regulatory regime [in which] the marketplace -- and not the regulatory arena -- shapes the development and delivery of mobile services."⁵ Rules should be designed "to ensure that the spectrum is put to its best and most valued use and the greatest benefit to the public is attained."⁶ Market forces, rather than federal regulations, should drive whether fixed or mobile services are offered by licensees.⁷

II. Regulatory Parity Requires That Similar Services Be Subject to the Same Regulatory Treatment

No provider of a service should be subject to any greater regulation than any other provider of a similar service. The Commission is consistently eliminating disparities between functionally equivalent services.⁸ In permitting CMRS providers to offer both fixed and mobile services, the Commission should ensure that it does not undermine its regulatory parity objectives and the objective of Congress to increase competition.

⁵ *Implementation of Sections 3(n) and 332 of the Communications Act*, GN Docket No. 93-252, *Third Report and Order*, 9 F.C.C.R. 7988, 8002 (1994).

⁶ *Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use*, ET Docket No. 94-32, *Notice of Proposed Rulemaking*, 9 F.C.C.R. 6779, 6780 (1994).

⁷ *See Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use*, ET Docket No. 94-32, *Notice of Proposed Rule Making*, 9 F.C.C.R. 6779, 6780 (1994).

⁸ *See Implementation of Sections 3(n) and 332 of the Communications Act*, GN Docket No. 93-252, *Second Report and Order*, 9 F.C.C.R. 1411, 1418 (1994); *see also Cincinnati Bell Tel. Co. v. FCC*, 69 F.3d 752, 768 (6th Cir. 1995) (questioning disparate regulatory treatment of similar services); *Melody Music, Inc. v. FCC*, 345 F.2d 730, 732-33 (D.C. Cir. 1965).

In this regard, the Commission is required to review competitive market conditions with respect to CMRS.⁹ In addition, Section 332(c)(3) permits states to regulate the rates for a particular commercial mobile radio service if they can establish that “such service is a replacement for land line telephone exchange service for a substantial portion of the telephone land line exchange service within such state.”¹⁰ If the Commission determines that a CMRS provider is offering a service which is being used as a substitute for local exchange service by a substantial portion of the public within its service area, the Commission should waive preemption of state regulation of the service. However, the Commission should continue to preempt state regulation of other services provided by CMRS providers that are not replacements for landline telephone exchange service.

III. Universal Service Obligations Should Not be Resolved in This Proceeding

Although BellSouth agrees that the *NPRM* raises issues relating to whether wireless local loop providers should be subject to universal service obligations or be eligible for universal service programs, these issues are currently being examined in other proceedings before the Commission.¹¹

⁹ See 47 U.S.C. § 332(c)(1)(C).

¹⁰ See 47 U.S.C. § 332(c)(3).

¹¹ See *Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, CC Docket No. 80-286, *Notice of Proposed Rule Making and Notice of Inquiry*, FCC 95-282, 60 Fed. Reg. 46803 (Sept. 8, 1995); *Amendment of the Commission's Rules and Policies to Increase Subscribership and Usage of the Public Switched Network*, CC Docket No. 95-115, *Notice of Proposed Rule Making*, FCC 95-281, 60 Fed. Reg. 44296 (Aug. 25, 1995). See also 47 U.S.C. § 254 (1996); The Telecommunications Act of 1996, H.R. Conf. Rep. No. 104-458, 104th Cong., 2d Sess. (1996).

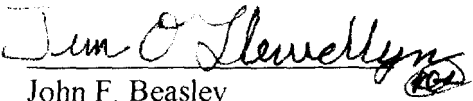
Accordingly, BellSouth concurs with the Commission that it would be appropriate to defer consideration of universal service issues to these pending proceedings.¹²

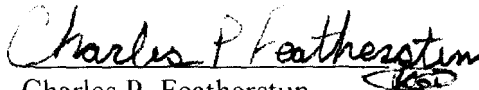
CONCLUSION

For the aforementioned reasons, BellSouth supports allowing CMRS providers to offer both fixed wireless and mobile wireless services over their assigned spectrum. Additionally, the Commission should allow state regulation of a CMRS offering if it is being used as a substitute for local exchange service by a substantial portion of the public within the CMRS provider's service area.

Respectfully submitted,

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¹²

See NPRM at ¶ 21.